UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/28
21 February 1991

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-seventh session
Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in Cuba

Report by the Secretary-General submitted in accordance with Commission on Human Rights resolution 1990/48

1. At its forty-fifth session, on 9 March 1989, the Commission on Human Rights adopted decision 1989/113 which is entitled "Consideration of the report of the mission which took place in Cuba in accordance with Commission decision 1988/106" and in which the Commission decided:

"(a) To take note of the serious and comprehensive report (E/CN.4/1989/46 and Corr. 1) submitted by the Chairman of its forty-fourth session, together with the other members of the mission appointed under its decision 1988/106, as a result of their observation of human rights in Cuba;

(b) To thank the Government and people of Cuba for the co-operation extended to the mission in carrying out its visit and the reaffirmation of the desire of the Cuban authorities to continue co-operation in the human rights sphere and to keep the Secretary-General informed;

(c) Also to bear in mind the willingness of the Government of Cuba to analyse the observations made by the mission in its report and to take into account the objective assessments formulated in the course of the debate with regard to the exercise and enjoyment of human rights in Cuba;

(d) To welcome the willingness of the Government of Cuba to co-operate with the Secretary-General in maintaining their direct contacts on the issues and questions contained in the report; these contacts and their results will be taken up by the Secretary-General in an appropriate manner;

(e) To emphasize the spirit of multilateral co-operation which characterized the fulfilment of the mission established by decision 1988/106."

2. Before adopting this decision, the Commission rejected an oral amendment for the inclusion between paragraphs (c) and (d) of a new paragraph which would have requested "the Secretary-General to maintain direct contacts with the Government and people of Cuba for the purposes of: receiving information from the Government and people of Cuba regarding issues and questions contained in the report, communicating to the Government of Cuba any additional information and inquiries he may receive from all appropriate sources, and reporting to the Commission as appropriate".

3. In the light of the foregoing, on 29 January 1990, I wrote to the Chairman of the forty-sixth session of the Commission on Human Rights informing her that, for the past 10 months, I had been maintaining ongoing contacts, both written and oral, with the Government of Cuba in accordance with decision 1989/113 and that I remained at the Commission's disposal.

4. At its forty-sixth session, on 6 March 1990, the Commission adopted resolution 1990/48, which is entitled "Situation of human rights in Cuba" and reads as follows:

"The Commission on Human Rights,

Recalling the report of the mission which took place in Cuba in accordance with Commission decision 1988/106 of 10 March 1988 (E/CN.4/1989/46 and Corr. 1),

Aware that this report contains questions and issues which have not been fully addressed, as well as testimonies from hundreds of individuals concerning the question of human rights in Cuba,

Recalling also its decision 1989/113 of 9 March 1989, in which it requested the Secretary-General to maintain contacts with the Government of Cuba on the issues and questions contained in the report,

Taking note of the letter of the Secretary-General to the Chairman of the Commission dated 29 January 1990, in which the Secretary-General informed the Commission that he has been maintaining ongoing contacts, both written and oral, with the Government of Cuba on this matter,

Expressing appreciation to the Secretary-General for his efforts in support of respect for human rights and fundamental freedoms,

Concerned by reports that witnesses who testified before the Working Group of the Commission have since been subject to arrest, harassment, or other forms of reprisals by the Government of Cuba,

Aware of its responsibility to defend and support those who have put their faith in this body and its representatives in promoting and protecting human rights and fundamental freedoms,

1. Calls upon the Government of Cuba to honour its repeated guarantees to the representatives of the Commission who visited Cuba pursuant to decision 1988/106 that individuals who attempted to present information to these representatives would not be subject to reprisals, detention, or negative consequences of any nature whatsoever;

2. Calls upon the Government of Cuba to provide the Commission, at its forty-seventh session, with a response to the unanswered questions put to the Cuban authorities by representatives of the Commission (E/CN.4/1989/46 and Corr. 1, annex XVI) and to questions related to the documents listed in annex III to the report of the mission;

3. Welcomes the willingness of the Secretary-General to put himself at the disposal of the Commission regarding his ongoing contacts with the Government of Cuba, as expressed in his letter to the Chairman of the Commission dated 29 January 1990, and requests that he provide, under this agenda item, the results of these contacts to the Commission at its forty-seventh session."

5. The purpose of this report is to comply with the request addressed to me by the Commission in paragraph 3 of the above-mentioned resolution by providing the Commission with the results of the contacts with the Government of Cuba on "the issues and questions contained in the report" of the mission which visited Cuba from 16 to 25 September 1988, in accordance with paragraph (d) of decision 1989/113.

6. As pointed out in my letter of 29 January 1990 to the Chairman of the Commission's forty-sixth session, I have maintained frequent contacts, following the mission as well, both in writing and orally and in person and through my colleagues, with the Minister for Foreign Affairs of Cuba and with Cuba's Permanent Representative to the United Nations, as well as with other Cuban Government authorities, on the issues and questions referred to in paragraph (d) of decision 1989/113.

7. Firstly, in a letter of 4 May 1989 addressed to the Permanent Representative of Cuba to the United Nations, I informed him that I would be pleased to receive any information that the Government of Cuba might wish to provide in connection with the matters referred to in the decision. The text of the letter is reproduced in annex I to this report.

8. By letter dated 24 April 1989, the Minister for Foreign Affairs of Cuba informed me that the Cuban authorities intended to conduct an in-depth analysis of the points mentioned in paragraph (c) of decision 1989/113 and to transmit to me, at the appropriate time, any information that might arise from that analysis. He also reaffirmed his willingness to maintain any direct contacts I might consider useful and positive "on the issues and questions contained in the report". The text of the letter is reproduced in annex II to this report.

9. Secondly, acting in accordance with the decision as well as in the exercise of my good-offices functions, I contacted the Government of Cuba on numerous occasions concerning the situation of 22 persons who had co-operated in one way or another with the mission and who, in the course of 1989, had reportedly been subjected to arrest, legal action or harassment. The Minister for Foreign Affairs of Cuba provided me with information on each of these cases, and indicated that the persons I had mentioned had been accused of activities or acts committed since the missions visit and unrelated to it; he reiterated that Cuba could not be required "to grant permanent immunity to certain citizens simply because they had participated in acts connected with the presence of the mission". I did not consider it feasible to submit to the Government of Cuba, under the mandate I had received from the Commission, cases of detention that had occurred in 1990 in view of the time that had elapsed since the mission's visit, although I did raise some of these cases in the context of my good-offices functions.

10. According to the latest information provided to me by the Government of Cuba, 19 of these 22 persons have been released or are on parole, and only 3 are currently serving prison sentences. In supplying me with this information, the Minister for Foreign Affairs reaffirmed Cuba's willingness to continue co-operating with me on human rights questions, but on the same footing as all other Members of United Nations and provided that it was not treated in a different or discriminatory manner. The names of the 22 persons about whom I maintained contact with the Government of Cuba are listed in annex III to this report.

11. Thirdly, in view of the preliminary nature of the comments contained in the letter of 28 February 1989 addressed by Cuba's Deputy Minister for Foreign Affairs to the Chairman of the mission that visited Cuba (E/CN.4/1989/75), I requested the Government of Cuba to transmit to me its final comments on the information submitted by the mission on 13 December 1988. The Permanent Representative of Cuba transmitted these comments in his letter of 27 September 1989, which is reproduced in annex IV.

12. Lastly, I should point out that this report does not cover my past and present dealings and contacts with the Government of Cuba which, like those with any other State Member of the United Nations, should, by virtue of my good-offices functions, remain confidential in order to ensure their effectiveness and credibility.

Annex I

Letter dated 4 May 1989 from the Secretary-General of the United Nations addressed to the Permanent Representative of the Republic of Cuba to the United Nations

Sir,

I have the honour to refer to Commission on Human Rights decision 1989/113 of 9 March 1989 (copy enclosed), by which the Commission considered the report of the mission which took place in Cuba in accordance with Commission decision 1988/106.

In paragraph (a) of this decision, the Commission on Human Rights took note of the serious and comprehensive report submitted by the Chairman at its forty-fourth session, together with the other members of the mission appointed under its decision 1988/106, as a result of their observation of human rights in Cuba. In paragraph (b), the Commission thanked the Government and people of Cuba for the co-operation extended to the mission in carrying out its visit and the reaffirmation of the desire of the Cuban authorities to continue co-operation in the human rights sphere and to keep the Secretary-General informed. The Commission further referred, in paragraph (c) of its decision, to the willingness of the Government of Cuba to analyse the observations made by the mission in its report and to take into account the objective assessments formulated in the course of the debate wih regard to the exercise and enjoyment of human rights in Cuba. In paragraph (d) of this decision, the Commission welcomed the willingness of the Government of Cuba to co-operate with the Secretary-General in maintaining their direct contacts on the issues and questions contained in the report; those contacts and their results would be taken up by the Secretary-General in an appropriate manner. In the final paragraph of the decision, the Commission on Human Rights emphasized the spirit of multilateral co-operation which had characterized the fulfilment of the mission established by decision 1988/106.

In accordance with that decision, I would inform you that, in order to be able to perform the task assigned to me under paragraph (d) of the decision, I would be pleased to receive any information that the Government of Cuba may wish to provide in connection with the matters referred to in this decision.

Accept, Sir, the assurances of my highest consideration.

(Signed) Javier PEREZ DE CUELLAR

Annex II

Letter dated 24 April 1989 from the Minister for Foreign Affairs of the Republic of Cuba addressed to the Secretary-General of the United Nations

Sir,

I write to you in connection with decision 1989/113 adopted by the Commission on Human Rights on 9 March this year. In an unprecedented gesture, Cuba took the initiative of inviting a mission of the Commission on Human Rights to visit the country, observe the human rights situation and report thereon to the Commission. The invitation was extended because of the Cuban Government's firm conviction that there are in Cuban society no problems or situations amounting to a pattern of human rights violations, and in the certainty that the mission would fulfil its mandate with absolute objectivity and good faith.

It is common knowledge that the Cuban Government gave the mission every facility and assurance during both its preparations and its work in the country, where it spent 10 days in constant activity. The mission's report to the Commission last February acknowledged the positive attitude and goodwill displayed by the Cuban authorities.

The visit and the report of the mission gave the Commission on Human Rights the opportunity to discuss, at length and in public, the results of the observations made in Cuba, together with other material on the subject provided by representatives of other Governments and international non-governmental organizations. Both the report to the Commission and the extensive debate thereon, which occupied three long working meetings last March, made it plain that there was no human rights situation in Cuba justifying the application of a special procedure that would treat Cuba in a markedly different way from other Members of the United Nations in such matters.

In the operative part of decision 1989/113, the Commission decides:

(i) Also to bear in mind the willingness of the Government of Cuba to analyse the observations made by the mission in its report and to take into account the objective assessments formulated in the course of the debate with regard to the exercise and enjoyment of human rights in Cuba;

(ii) To welcome the willingness of the Government of Cuba to co-operate with the Secretary-General in maintaining their direct contacts on the issues and questions contained in the report; these contacts and their results will be taken up by the Secretary-General in an appropriate manner.

In connection with that decision, allow me to convey to you the entire, unrestricted and sovereign readiness of the Government of Cuba to give full effect to each and every one of the points mentioned above. In so doing, Cuba is not setting a new course in its relations with you or the Organization, but rather continuing its long-established policy of honouring the commitments inherent in its status as a State Member of the United Nations, and encouraging international co-operation in all parts of the United Nations system.

In this regard, I am pleased to inform you that the Cuban authorities will conduct an in-depth analysis of the points mentioned in (i) above, and will transmit to you, at the appropriate time, any observations that may arise from that analysis.

As regards (ii) above, I would repeat that Cuba's willingness to co-operate with you in any future direct contacts which you may consider it useful and positive to maintain with our authorities "on the issues and questions contained in the report" will be as extensive and consistent as in all other relations which Cuba has had with you previously on this and other subjects. My Government is confident that you will take up these contacts and their results in an appropriate manner, as has always been the case, and as required by decision 1989/113.

As regards this latter part of the decision, the Cuban Government is confident that in any future contact with it, you will be guided by your customary desire to uphold the key principles of the Charter signed in San Francisco, including the sovereign equality of all States Members of the Organization, non-interference in the internal affairs of States, and the need to encourage co-operation among Member States, since the Organization comprises States with differing political, economic and social systems and the internal institutional system of any State cannot be called in question unless it is contrary to the Charter itself or involves a threat to international peace and security (which is obviously not the case with Cuba).

Further, in the view of the Cuban Government, such possible contacts should occur, if appropriate, not only having regard to the specific content of decision 1989/113, as approved by the Commission, but also in the light of the texts submitted to the Commission for its consideration but not approved by it last March.

In other words, with the same determination and firmness with which I expressed Cuba's readiness to comply with the Commission's decision, I wish to make it clear, on behalf of my Government, that Cuba does not feel either morally or legally obliged to take steps or initiatives deriving from texts which the Commission either expressly rejected or decided not to consider at all.

The results of the votes that were held in the Commission on 9 March 1989 prove beyond any doubt that the majority of its members refused to accept - and in some cases even to express an opinion on - various anti-Cuban initiatives. In the first place, the Commission clearly rejected the idea that the human rights situation in Cuba should continue to be observed, and that, to this end, our country should be singled out by a special procedure applicable to it. This was therefore a clear rejection of an attempt to impose on Cuba special obligations in this field different from those applying to all States Members of our Organization against which allegations of supposed human rights violations are made.

Moreover, the Commission did not agree that possible direct contacts by you in this matter should be made with sources other than the Cuban Government authorities. The Commission also refused to consider the proposal that this question should be discussed at its forthcoming forty-sixth session or at any other. Lastly, the Commission also declined to entrust you with the specific

task of communicating to the Cuban Government any information and inquiries you might receive from all appropriate sources, and subsequently reporting to the Commission as appropriate. Obviously, there are perfectly well-established and clear procedures in this area which are applicable to all States Members of the United Nations and to which Cuba does not have the slightest objection.

The Cuban Government will do everything in its power to enhance international co-operation to the maximum in this area. You may therefore rely, as you have always been able to do, on the complete willingness of the Cuban authorities to help make your well-known efforts to this end a success.

Accept, Sir, the assurances of my highest consideration.

(Signed) Isidoro MALMIERCA

Annex III

List of persons whose cases have been raised by the Secretary-General with the Cuban authorities

1. Enrique ACOSTA RUIZ*
2. Armando ARAYA GARCIA*
3. Roberto BAHAMONDE MASSOT*
4. Lázaro Angel CABRERA PUENTES*
5. Hiram Abi COBAS**
6. Tania DIAZ CASTRO**
7. Juan Enrique GARCIA CRUZ****
8. Lidia GONZALEZ GARCIA*
9. Manuel GONZALEZ GONZALEZ*
10. Manuel GONZALEZ ROSELL*
11. Hubert JEREZ MARINO*
12. Gilberto PLASENCIA JIMENEZ*
13. Samuel MARTINEZ LARA**
14. David MOYA ALFONSO*
15. Alfredo MUSTELIER NUEVO*
16. Ramón OBREGON SARDUY****
17. Roberto Jesús PAGAN DIAZ*
18. Pedro Roberto PUPO SANCHEZ**
19. Lázaro ROSA ARBOLEY*
20. Leonardo Leonel RUBIO MONTALVO*
21. Elizardo SANCHEZ SANTA CRUZ***
22. Sergio Raúl de la VEGA GOMEZ*

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* Released.

** Released on parole or probation.

*** Will be released in the next few weeks.

**** Serving prison sentences for attempted hijacking, with physical violence, of a passenger ship making the crossing from Batabanó to Isla de la Juventud.

Annex IV

Letter dated 27 September 1989 from the Permanent Representative of the Republic of Cuba to the United Nations addressed to the Secretary-General of the United Nations

Sir,

I have the honour to refer to Commission on Human Rights decision 1989/113 of 9 March 1989, while having the pleasure of acknowledging receipt of your letter of 4 May 1989 on this subject.

I am also pleased to inform you that, as our Minister for Foreign Affairs, Isidoro Malmierca, advised you by communication of 24 April 1989, a joint committee established specially for the purpose carried out a detailed study of the report of the mission which visited Cuba in September 1988.

This analysis confirmed that the report does not contain any observation, criticism or suggestion concerning the human rights situation in our country. Moreover, it demonstrates that there does not exist in Cuba a situation of gross and massive violations of human rights, as the unfounded and malicious allegation by a member of the Commission on Human Rights would have it.

Again, the joint committee found that two thirds of the assertions made by the persons who were interviewed by the mission, or filled out forms for the Secretariat, referred to migration problems. The committee further established that the overwhelming majority of the other allegations officially reproduced in the report word for word, without any supporting evidence, are false and insufficiently substantiated and relate to periods of up to 15, 20 or more years ago and hence to a time that is excluded from the mission's mandate.

Practically all the allegations were refuted, answered or explained during the mission's visits to different places, its meetings with various sectors of our people and its talks with many senior officials of our Government. It is worth emphasizing that, whereas the annexes to the report reproduce verbatim the allegations made by numerous individuals, not one of the clarifications made by our officials was included verbatim in them. As you know, and as the report indicates, President Fidel Castro received the mission and addressed various matters of concern to its members in a substantive manner.

Clarification was also provided by the statements made by the head of our delegation during the discussions at the forty-fifth session of the Commission on Human Rights in Geneva, and in the written communications addressed to Ambassador Alioune Sene by the latter and by the Minister of the Interior of the Republic.

It should be recalled that, on 28 February 1989, the Deputy Minister for Foreign Affairs, Raúl Roa Kourí, transmitted to Ambassador Sene the results of the investigations conducted in our country up to that date in relation to the approximately 1,600 forms completed by various individuals, who enjoyed the necessary facilities to communicate freely with the visiting mission and the secretariat of the Centre for Human Rights.

In view of the short time then available to make the necessary inquiries into these cases, it was not possible to complete verification of 157 of them. On the present occasion, I refer to the cases concerned in an attached document, but I should make it clear that we never received 14 of these forms and that 37 of the 143 that were received are duplicates, so that in fact there are 106 still awaiting an answer.

The cases pending a reply may be broken down as follows:

Unfounded claims: 48;

Misclassified by the Secretariat, with reply coming under another heading: 32, of which

Persons already left the country: 4;

Departure already authorized by Cuba, but persons unable to leave because they do not have a visa: 19;

Persons have not submitted an application to the Directorate of Immigration and Aliens: 9;

Insufficient elements for verification: 19;

Describe good treatment in prisons: 2;

Claims submitted and receiving attention from the relevant authorities: 5.

As regards persons wishing to leave the country, I wish to repeat that my Government's policy is to authorize such departure except in a few cases that were explained to the mission of the Commission on Human Rights and entail only a temporary rather than a permanent prohibition.

As you will be aware, Cuba and the United States have a migration agreement under which 20,000 persons could emigrate from Cuba to the United States each year; in 1988, however, the United States Government granted entry permits to only 3,506 persons, and so far this year only 978 persons have received such permits.

It is not irrelevant to recall that eight successive United States administrations have used every possible means to encourage and incite Cuban citizens to leave the country. As a result, there are unfortunately continuing numbers of persons who leave the country illegally, particularly by sea, with the safety risks that that involves.

This policy is still being promoted by various means.

It is obvious that, until such time as the United States authorities effectively comply with the migration agreement in force with our country, the problems concerned cannot be adequately solved.

The mission's report also demonstrates that the realities of the situation in Cuba cannot be explained outside the context of the policy of hostility, aggression and blockade practised against our country, which has characterized Cuban-United States relations for the last 30 years.

The Government of Cuba considers that, with the supplementary information that it has the honour to transmit to you with this communication, it has satisfied the sovereign commitments which it assumed pursuant to Commission on Human Rights decisions 1988/106 and 1989/113.

To seek to extend these decisions beyond their true scope would be alien to the spirit of co-operation which we have always been willing to offer.

To try to take advantage of this willingness so as to subject us to scrutiny and questioning dictated by particular political interests opposed to my country and divorced from any honest or genuine humanitarian concern could not fail to be interpreted by my Government as an act to be repudiated.

In this connection, I would recall the position of the Government of Cuba, as set out in Minister Malmierca's note to you:

> "Further, in the view of the Cuban Government, such possible contacts should occur, if appropriate, not only having regard to the specific content of decision 1989/113, as approved by the Commission, but also in the light of the texts submitted to the Commission for its consideration but not approved by it last March.
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> In other words, with the same determination and firmness with which I expressed Cuba's readiness to comply with the Commission's decision, I wish to make it clear, on behalf of my Government, that Cuba does not feel either morally or legally obliged to take steps or initiatives deriving from texts which the Commission either expressly rejected or decided not to consider at all.
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> The results of the votes that were held in the Commission on 9 March 1989 prove beyond any doubt that the majority of its members refused to accept - and in some cases even to express an opinion on - various anti-Cuban initiatives. In the first place, the Commission clearly rejected the idea that the human rights situation in Cuba should continue to be observed, and that, to this end, our country should be singled out by a special procedure applicable to it. This was therefore a clear rejection of an attempt to impose on Cuba special obligations in this field different from those applying to all States Members of our Organization against which allegations of supposed human rights violations are made.
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> Moreover, the Commission did not agree that possible direct contacts by you in this matter should be made with sources other than the Cuban Government authorities. The Commission also refused to consider the proposal that this question should be discussed at its forthcoming forty-sixth session or at any other. Lastly, the Commission also declined to entrust you with the specific task of communicating to the

Cuban Government any information and inquiries you might receive from all appropriate sources, and subsequently reporting to the Commission as appropriate. Obviously, there are perfectly well-established and clear procedures in this area which are applicable to all States Members of the United Nations and to which Cuba does not have the slightest objection."

Knowing of your concern and sensitivity in regard to human rights problems and bearing in mind the close relations which we have always maintained with you and your office, I am confident that you will understand the reasons for our position.

Accept, Sir, the assurances of my highest consideration.

(Signed) Oscar ORAMAS OLIVA